

ASSEMBLY BILL

No. 1397

Introduced by Assembly Member Arambula

February 22, 2005

An act to amend Sections 1240.650 and 1245.250 of the Code of Civil Procedure, relating to eminent domain.

LEGISLATIVE COUNSEL'S DIGEST

AB 1397, as introduced, Arambula. Eminent domain: public utility property.

Existing law provides that where the property that has been appropriated to a public use is electric, gas, or water public utility property, as defined, which the public entity intends to put to the same use, the presumption of a more necessary use creates a rebuttable presumption affecting the burden of proof, that the power of eminent domain has been properly exercised. Existing law, however, does not apply to the Mortara Sanitary District, as specified.

This bill would delete that rebuttable presumption, and would instead require a local public entity that appropriates electric, gas, or water public utility property to prove a more necessary use by clear and convincing evidence that the public utility has continually failed to comply with governing rules and regulations. The bill would further delete the above-described exception with regard to the sanitary district, and would make other conforming changes to a related provision.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1240.650 of the Code of Civil Procedure is amended to read:

1240.650. (a) Where property has been appropriated to public use by any person other than a public entity, the use thereof by a public entity for the same use or any other public use is a more necessary use than the use to which ~~such~~ *that* property has already been appropriated.

(b) Where property has been appropriated to public use by a public entity, the use thereof by the public entity is a more necessary use than any use to which ~~such~~ *that* property might be put by any person other than a public entity.

(c) Where ~~the property which~~ *that* has been appropriated to a public use is electric, gas, or water public utility property, which the public entity intends to put to the same use, ~~the presumption of a more necessary use established by subdivision (a) is a rebuttable presumption affecting the burden of proof, unless the acquiring public entity is a sanitary district exercising the powers of a county water district pursuant to Section 6512.7 of the Health and Safety Code~~ *public entity shall prove a more necessary use by clear and convincing evidence that the public utility has continually failed to comply with governing rules and regulations.*

SEC. 2. Section 1245.250 of the Code of Civil Procedure is amended to read:

1245.250. (a) Except as otherwise provided by statute, a resolution of necessity adopted by the governing body of the public entity pursuant to this article conclusively establishes the matters referred to in Section 1240.030.

~~(b) If the taking is by a local public entity, other than a sanitary district exercising the powers of a county water district pursuant to Section 6512.7 of the Health and Safety Code, and the property is electric, gas, or water public utility property, the resolution of necessity creates a rebuttable presumption that the matters referred to in Section 1240.030 are true. This presumption is a presumption affecting the burden of proof.~~

~~(c) If the taking is by a local public entity and the property described in the resolution is not located entirely within the boundaries of the local public entity, the resolution of necessity~~

1 creates a presumption that the matters referred to in Section
2 1240.030 are true. This presumption is a presumption affecting
3 the burden of producing evidence.

4 ~~(d)~~—

5 (c) For the purposes of subdivision (b), a taking by the State
6 Reclamation Board for the Sacramento and San Joaquin
7 Drainage District is not a taking by a local public entity.

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